

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

GIANCARLO GUIDO & SANDRA	:	
VASQUEZ,	:	
Individually and as H/W,	:	
	:	Civil Action No.
Plaintiffs,	:	14cv8122(SRC) (CLW)
	:	
- against -	:	
	:	<u>ANSWER</u>
RICARDO CABALLERO, d/b/a MAJOR	:	
CHEVROLET, INC., MAJOR	:	
CHEVROLET, INC., CAPITAL ONE	:	
AUTO FINANCE, INC., AND JOHN	:	
DOES 1-10,	:	
	:	
Defendants.	:	

PLEASE TAKE NOTICE, that Defendants, RICARDO CABALLERO, MAJOR CHEVROLET, INC., and CAPITAL ONE, N.A.¹by and through their attorney, WILLIAM M. DELLICATO, ESQ. answering the First Amended Complaint of the Plaintiff, hereby respectfully allege on information and belief:

Jurisdiction and Venue

1. Defendants state that paragraph "1" contains legal conclusions and not averments of fact to which a response is required. To the extent a response is required, Defendants deny

¹ The First Amended Complaint incorrectly names "Capital One Auto Finance, Inc." as a Defendant, but no such entity exists. "Capital One Auto Finance," however, is a division of Capital One, N.A.

the allegations stated in paragraph "1" of the Amended Complaint.

2. Defendants state that paragraph "2" contains legal conclusions and not averments of fact to which a response is required. To the extent a response is required, Defendants deny the allegations stated in paragraph "2" of the Amended Complaint.

Parties

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "3" of the Amended Complaint.

4. Defendants admit the allegations as to the corporate Defendant stated in paragraph "4" of the Amended Complaint.

5. Defendants admit the allegations as to the individual Defendant that he is a citizen of New York and denies all other allegations as to the individual as stated in paragraph "5" of the Amended Complaint.

5a. Defendants state that paragraph "5(a)" does not contain an averment of underlying fact to which a response is required.

6. Defendants deny the allegations in paragraph "6." There is no such entity as Capital One Auto Finance, Inc. Capital One Auto Finance is a division of Capital One, N.A. And Capital One, N.A. is a national banking association organized

under the laws of the United States and its articles of association state that its main office is located at 1680 Capital One Drive, McLean, Virginia 22102.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "7" of the Amended Complaint.

Operative Facts

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "8" of the Amended Complaint.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "9" of the Amended Complaint.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "10" of the Amended Complaint.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "11" of the Amended Complaint. Defendants further state that the second sentence in paragraph "11" contains a legal conclusions and not averments of fact to which a response is required. To the extent a response is required,

Defendants deny the allegation in the second sentence of paragraph "11" of the Amended Complaint.

12. Defendants deny the allegation in paragraph "12" as characterized.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "13" of the Amended Complaint.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "14" of the Amended Complaint.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "15" of the Amended Complaint.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "16" of the Amended Complaint.

17. Defendants deny the allegations stated in paragraph "17" of the Amended Complaint.

COUNT I

18. Defendants state that paragraph "18" does not contain an averment of underlying fact to which a response is required.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph "19" of the Amended Complaint.

20. Defendants state that paragraph "20" contains legal conclusions and not averments of fact to which a response is required. To the extent a response is required, Defendants deny the allegations stated in paragraph "20" of the Amended Complaint.

21. Defendants state that paragraph "21" contains legal conclusions and not averments of fact to which a response is required. To the extent a response is required, Defendants deny the allegations stated in paragraph "21" of the Amended Complaint.

Defendants deny that Plaintiffs are entitled to any of the relief requested in their Prayer for Relief.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

AS AN FOR A SECOND AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over the defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims in the Amended Complaint fail to state a claim upon which relief can be granted as against the answering defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint should be dismissed for improper venue.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims in the Amended Complaint should be dismissed for failure to join a necessary party under Rule 19.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims in the Amended Complaint are barred by waiver and estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims in the Amended Complaint are barred by the doctrine of unclean hands.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims in the Amended Complaint are contrary to documentary evidence.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims in the Amended Complaint are barred by an accord and satisfaction.

AS AND FOR AN TENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint should be dismissed because Plaintiffs have failed to comply with the requirements of N.J.S.A. 56:8-67 and N.J.A.C. 13:4A-26F.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the statute of limitations.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint should be dismissed against defendant RICARDO CABALLERO, an individual since at all times relevant was acting solely in his capacity as an officer, director, employee or agent of the corporate defendant and not in an individual capacity.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint should be dismissed because any acts or omissions of the answering defendants were not the proximate cause of Plaintiffs' damages.

AS AND FOR A FIFTHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint should be dismissed because any acts or omissions of the answering defendants were not the proximate cause of Plaintiffs' damages.

WHEREFORE, the Defendants respectfully demand judgment against the Plaintiffs as follows:

(a) Dismissing Plaintiffs' Amended Complaint in its entirety; and

(b) awarding Defendants such other and further relief as this Honorable Court may deem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
June 29, 2015

s/ William M. Dellicato, Esq.
WILLIAM M. DELLICATO, ESQ. (WMD 4990)
Attorney for Defendants
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New York, New York 10016
(212) 244-4890

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

GIANCARLO GUIDO & SANDRA	:	
VASQUEZ,	:	
Individually and as H/W,	:	
	:	Civil Action No.
Plaintiffs,	:	14cv8122(SRC) (CLW)
	:	
- against -	:	
	:	<u>CERTIFICATION OF SERVICE</u>
RICARDO CABALLERO, d/b/a MAJOR	:	
CHEVROLET, INC., MAJOR	:	
CHEVROLET, INC., CAPITAL ONE	:	
AUTO FINANCE, INC., AND JOHN	:	
DOES 1-10,	:	
	:	
Defendants.	:	

I, William M. Dellicato, Esq., hereby certify that on June 29, 2015, I served the within ANSWER via ECF and email, respectively, upon the following parties:

Weisberg Law
Matthew B. Weisberg, Esq.
David A. Berlin, Esq.
Attorneys for Plaintiffs

s/ William M. Dellicato, Esq.
William M. Dellicato, Esq.